

SITE DEVELOPMENT PERMIT

FILE NO. H21-041

LOCATION OF PROPERTY 1660 Old Bayshore Hwy

ZONING DISTRICT HI Heavy Industrial

GENERAL PLAN DESIGNATION Heavy Industrial

PROPOSED USE Site Development Permit to allow additions

and façade modifications to an existing 24,486-square foot warehouse building, including a 3,000-square foot incidental office addition and 17,700-square foot canopy addition, and repaying of the remainder of the site for automobile and delivery vehicle parking on a

6.87-gross acre site

ENVIRONMENTAL REVIEW Focused Initial Study and Mitigated Negative

Declaration, 1660 Old Bayshore Industrial

Project

APPLICANT/ADDRESS Nektarios Matheou, Kier & Wright

3350 Scott Blvd, Building 22 Santa Clara, CA 95054

OWNERS/ADDRESSES Scott Swensen, Prologis

3353 Gateway Blvd Fremont, CA 94538

FACTS AND FINDINGS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is currently developed with four structures with a combined approximately 55,000 square feet, for which a demolition permit has been issued by the Building Department (Permit No. 2020-147534/H20-041). A fifth structure would remain, consisting of a 24,486 square-foot warehouse, and would be added to. The remainder of the site is a paved vehicle parking area. The site is located on the north side of Old Bayshore Highway, at the intersection of Terminal Avenue. The site is surrounded by industrial uses.

- 2. **Project Description.** This project is a Site Development Permit to allow a 3,000-square foot incidental office addition and a 17,700-square foot canopy addition to the existing warehouse. The existing warehouse façade would be remodeled. The remainder of the site would be repayed for automobile and delivery vehicle parking.
- 3. **General Plan Conformance.** The subject site is designated Heavy Industrial on the Envision San José 2040 General Plan Land Use/Transportation Diagram. This category is intended for industrial users with nuisance or hazardous characteristics which for reasons of health, safety, environmental effects, or welfare are best segregated from other uses. Warehouses are allowed within this designation.
- 4. **Zoning Conformance.** The project site is located in the HI Heavy Industrial Zoning District.
 - a. **Use.** Warehouses are permitted in this district, and incidental offices not exceeding 15 percent of the primary use (warehouse) are also allowed, in accordance with Section 20.50.125 of the Zoning Code. The warehouse is 24,486 square feet in area, and the incidental office would be 3,000 square feet, or 12 percent of the warehouse area, within the 15 percent limit.
 - b. **Height.** The heights of the office and canopy additions would be 24 feet, which is within the 50-foot height limit of the HI Zoning District (Section 20.50.200).
 - c. **Setbacks.** The additions would be set back approximately 260 feet from the Old Bayshore Highway street frontage, where a minimum 15-foot setback is required (Section 20.50.200). No setbacks are required from interior property lines.
 - d. **Parking:** Five parking spaces are required for warehouses between 5,000 and 25,000 square feet (Section 20.90.060), and no parking is required for the incidental office (Section 20.15.125). Seventy parking spaces are provided, exceeding the requirement.
- 5. **Site Development Permit Findings.** Section 20.100.630 of the San Jose Municipal Code establishes required findings for issuance of a Site Development Permit.
 - a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies.
 - Analysis: The proposed project is consistent with the General Plan as analyzed above. The project is consistent with the North San Jose Area Development Policy in that a traffic impact fee pursuant to the policy is required prior to issuance of a Building Permit.
 - b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project.
 - Analysis: As analyzed above, the project is consistent with the Municipal Code, including the Zoning Code.
 - c. The Site Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency.
 - Analysis: An on-site sign describing the project has been installed since October 26, 2020 and notice for the public hearing was mailed to property owners and tenants within a radius of 500 feet of the project site, which is consistent with the Public Outreach City Council Policy.

- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.
 - Analysis: The project consists of a single building on the site, including additions. The building location of the building is compatible with the surrounding paved parking area.
- e. The orientation, location, and elevation of the proposed buildings and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.
 - Analysis: The proposed additions and remodeled façade of the building are industrial in character, consistent with the heavy industrial character of the area.
- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.
 - Analysis: The subject site is served by public services such as water, sewer, trash and is not in an environmentally sensitive area. Construction and paving noise and air quality would be temporary. The surrounding area is entirely industrial in character and would not be negatively affected by these temporary effects.
- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.
 - Analysis: The project would include landscaping along the street frontage, which will upgrade the appearance of the area. Trash facilities are located within walled enclosures.
- h. Traffic access, pedestrian access and parking are adequate.
 - Analysis: The subject property is served by Old Bayshore Highway, with immediate access to Highway 101. The project traffic and site access have been reviewed by the Public Works Department and Department of Transportation and found to be adequate.
- 6. Environmental Review. A focused environmental initial study was prepared for the project analyzing the potential environmental effects of air quality, greenhouse gas emissions, hazards and hazardous materials, and transportation. The initial study determined that with mitigation measures and standard environmental project conditions, the project would not have a significant effect on the environment; therefore, a mitigated negative declaration was prepared. The initial study was circulated for public comment from August 30 September 20, 2021. One public comment was received with regard to the method used to determine the VMT and air quality impacts of the project; and it was determined the analysis methods were appropriate. The commenter also stated the cumulative VMT impacts of the project should be analyzed; and it was concluded VMT cumulative impacts only potentially occur with changes to the General Plan, and no General Plan amendment is proposed with this project.

In accordance with the findings set forth above, a Site Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each

and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Site Development Permit (collectively "Permit") within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
- 2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by the Director, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
- 3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this Permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
- 4. Sewage Treatment Demand. Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

- 5. **Conformance to Plans.** The development of the site shall conform to the approved Site Development Permit Amendment plans entitled, "Site Development Permit H20-041 1600 & 1720 Old Bayshore" dated June 17, 2021 on file with the Department of Planning, Building and Code Enforcement, and to the San Jose Building Code with the exception of any subsequently approved changes.
- 6. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
- 7. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San Jose Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
- 8. **Colors and Materials.** All building colors and materials shall be those specified on the Approved Plan Set.
- 9. **Permit Adjustment Required.** Prior to issuance of Building Permits for the project, a Permit Adjustment shall be obtained by the Permittee to increase the width of the automobile parking area street setback and landscaping to 15 feet.
- 10. **Construction Disturbance Coordinator**. Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
- 11. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans*. This permit file number, H21-041, shall be printed on all construction plans submitted to the Building Division.
 - b. San Jose's Natural Gas Infrastructure Prohibition and Reach Code Ordinances. The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances may apply to this project and all requirements shall be met. For more information, please visit www.sjenvironment.org/reachcode.
 - c. Americans with Disabilities Act. The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - d. *Construction Plan Conformance*. A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.
 - e. Other. Such other requirements as may be specified by the Chief Building Official.
- 12. **Bureau of Fire Department Clearance for Issuing Permits**. Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code.

- 13. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
- 14. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
- 15. **Anti-Graffiti.** The Permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
- 16. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
- 17. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
- 18. **Nuisance.** As required by Title 20 of the San Jose Municipal Code, construction on this site shall be conducted in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
- 19. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
- 20. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
- 21. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Permittee will be required to have satisfied all of the following Public Works conditions. The Permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: http://www.sanjoseca.gov/devresources.
 - a. **Minor Improvement Permit**: The public improvements conditioned as part of this permit may require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.

- b. **Transportation**: This project is subject to the City's US-101/Oakland/Mabury Transportation Development Policy (TDP). The US-101/Oakland/Mabury TDP requires new residential and commercial developments that generate vehicular trips at either of the Policy Interchanges to pay a Traffic Impact Fee (TIF) towards the upgrade of US-101/Oakland Interchange and construction of US-101/Mabury Interchange. The 2021 TIF is \$41,449 for each project peak hour trip that travels through either the US-101/Oakland or US-101/Mabury Interchanges. This fee is subject to an annual escalation on January 1st per the Engineering News-Record Construction Cost Index for San Franciso
 - i. The US-101/Oakland/Mabury TDP includes a trip credit incentive, allocated for new industrial land uses or intensification of existing industrial land uses in the area. The TDP allocates a pool of 115 PM peak hour trips at the interchange intersections for trips generated by future industrial growth that are exempt from the TIF program. Trip credits are calculated based on both the estimated number of new peak-hour trips at the interchange intersections (i.e., trip assignment) and the level of intensification. The project as proposed may be applicable for the trip credit incentive.
 - ii. An area wide traffic impact analysis was prepared as part of the North San Jose Area Development Policy, adopted June 2005. Traffic impacts were identified and resulted in an area wide traffic impact fee. Consistent with North San Jose EIR, this project is required to pay a traffic impact fee. The 2021 fee is \$25.18 per s.f. of large-scale commercial buildings and subject to an annual escalation of 3.3% on July 1st and the next fee escalation will occur on July 1st, 2022. This fee must be paid prior to issuance of Public Works Clearance. Credits for existing structures on site will be applied to the traffic impact fee consistent with the policy and will be prorated with each building permits issued.
 - iii. A Local Transportation Analysis (LTA) has been performed for this project to evaluate the project's effect on transportation, access and related safety elements in the proximate area of the project. See separate Local Transportation Analysis Memo dated 06/04/21 for additional information. The following conditions shall be implemented:
 - 1) Provide two (2) 20-foot one-way right-turn driveways along Old Bayshore Highway.
 - 2) Provide one (1) 26-foot full-access driveway and one (1) 32-foot full-access driveway along Old Bayshore Highway.
 - 3) Provide an in-lieu contribution of \$100,000 to a pedestrian rail crossing at the Old Bayshore Highway/Queens Lane intersection.

c. Grading/Geology:

- i. A grading permit is required prior to the issuance of a Public Works Clearance.
- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code

- Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
- iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
- v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- d. **Stormwater Runoff Pollution Control Measures**: The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
- e. **Stormwater Peak Flow Control Measures**: The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- f. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- g. **Street Improvements**: Construct 10' wide City standard attached sidewalk with 4'x5' tree wells behind back of curb along Old Bayshore Highway project frontage.
 - a. Provide landscaping or decomposed granite within the extents from the back of sidewalk to the property line.

- b. Construct two (2) consecutive western 20-foot one-way right-turn driveways along Old Bayshore Highway.
- c. Construct one (1) 26-foot full-access driveway and one (1) eastern 32-foot full-access driveway along Old Bayshore Highway.
- d. Provide 5' inward curbline shift along the Old Bayshore frontage across from the existing Old Bayshore Hwy/US-101 NB On-Off ramps intersection in order to implement a 6' wide bike lane with a 4' buffer that matches the existing roadway striping along the Old Bayshore Hwy corridor.
- e. Provide a \$25K monetary contribution towards video detection camera implementation at the intersection of Old Bayshore Hwy/I-880 SB ramp.
- f. Remove existing fence that is within the Old Bayshore public right of way.
- g. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- h. Close unused driveway cut(s).
- i. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
- j. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- 22. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

23. Electrical:

- a. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- b. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
- 24. **Street Trees**: The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of walk. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

25. Referrals:

- a. This project should be referred to the California Department of Transportation (CalTrans) and Santa Clara Valley Transportation Authority (VTA).
- b. This project shall be coordinated with the DOT Regional projects team in reference to the US-101 Zanker Rd Interchange Project design:
 - i. Two options proposed for Old Bayshore will construct a raised median island that affects driveway access & circulation for development projects:

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- ii. Option 1 provides business access road along NB Old Bayshore Hwy.
- iii. Option 2 provides bike paths along Old Bayshore Hwy adjacent to retaining walls that continue going under the interchange structures.
- iv. Future roadway profile along Old Bayshore Hwy will affect this development project's proposed westerly driveway.
- 26. **Revocation, Suspension, Modification.** This Site Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San Jose Municipal Code it finds: \
 - a. A violation of any conditions of the Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this 17th day of November, 2021.

Chris Burton, Director Planning, Building, and Code Enforcement

Deputy